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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 KIWANNA K. CUNNINGHAM,
10 Plaintiff,
11 v.
12 D'ARCY BUSH,
13 Defendant.

No. C 16-06429 JSW

**ORDER TO SHOW CAUSE WHY CASE
SHOULD NOT BE DISMISSED AND
TRO DISSOLVED FOR FAILURE TO
PROSECUTE**

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16 On November 3, 2016, the Court received the Notice of Removal of Civil Action, removing
17 this action from the Superior Court of California, County of Alameda to this Court by Defendant.
18 Defendant contends the United States Attorney for the Northern District of California has certified
19 that D'Arcy Bush was acting within the course and scope of his employment with the United States
20 Postal Office at all times material to the alleged incidents giving rise to the civil harassment claim
21 made by Plaintiff, who is appearing *pro se*. Accordingly, the United States was automatically
22 substituted for defendant D'Arcy Bush pursuant to 28 U.S.C. Section 1442(a)(1).

23 From its review of the record, the Court determined that prior to removal, on September 26,
24 2016, upon receipt of a request from Plaintiff, the Superior Court issued a temporary restraining
25 order ("TRO") against defendant Bush ordering Bush to stay at least three yards away from Plaintiff
26 and Plaintiff's home, car, and three children, their school and day care. (Notice of Removal, ¶ 3, Ex.
27 2.) The TRO was set to expire on October 17, 2016. (*Id.*) On October 17, 2016, the Superior Court
28 issued an order continuing the hearing date to November 7, 2016, based on the fact that Bush had

1 not been served. (*Id.* at ¶ 4, Ex. 3.) The TRO was set to remain in place until that date. (*Id.*) On
2 October 28, 2016, Bush filed a response to the request for the civil harassment restraining order,
3 disputing its terms and denying the conduct alleged. (*Id.* at ¶ 5, Ex. 4.) On October 31, 2016,
4 Plaintiff filed a proof of service indicating that Bush was served on October 23, 2016. (*Id.* at ¶ 6,
5 Ex. 5.) On October 25, 2016, the United States Attorney's Office received notice of this pending
6 action from the United States Postal Service and thereafter removed.

7 On November 4, 2016, this Court issued an order requiring in-person service to Plaintiff and
8 continuing the TRO to expire at the conclusion of a hearing by this Court and set such hearing for
9 December 16, 2016 at 9:00 a.m. The Court advised Plaintiff to seek information from the Legal
10 Help Center.

11 On November 10, 2016, the Court received a motion filed by Defendant to dismiss the action
12 for lack of jurisdiction and to dissolve the TRO. A response from Plaintiff was due no later than
13 November 28, 2016. The Court has received no response.

14 Accordingly, Plaintiff is HEREBY ORDERED TO SHOW CAUSE why this case should not
15 be dismissed. If Plaintiff seeks to file an untimely opposition to Defendant's motion to dismiss and
16 to dissolve the TRO, she must submit a request showing good cause for her failure to file an
17 opposition within the time required by the Local Rules and shall submit a proposed opposition brief
18 with any such request. Plaintiff's response to this Order to Show Cause shall be due by no later than
19 December 9, 2016. If Plaintiff responds, Defendant shall have until December 13, 2016 to file its
20 reply. If Plaintiff fails to file a response to this Order by December 9, 2016, the Court shall dismiss
21 this case without prejudice for failure to prosecute and shall dissolve the TRO and vacate the hearing
22 on the TRO currently set for December 16, 2016 at 9:00 a.m.

23 The Court again ADVISES Plaintiff that a Handbook for Pro Se Litigants, which contains
24 helpful information about proceeding without an attorney, is available through the Court's website
25 or in the Clerk's office. The Court also advises Plaintiff that he also may wish to seek assistance
26 from the Legal Help Center. Plaintiff may call the Legal Help Center at (415) 782-8982 or sign up
27 at the United States District Courthouse, 1301 Clay Street, Oakland, California, Room 470S, for a
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1 free appointment with an attorney who may be able to provide basic legal help, but not legal
2 representation.

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4 **IT IS SO ORDERED.**

5 Dated: December 1, 2016

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JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

